

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

LEE E. MOORE,)	CASE NO. C-1-00-0023
)	
Petitioner,)	JUDGE DLOTT
)	
vs.)	MAGISTRATE JUDGE MERZ
)	
BETTY MITCHELL, Warden)	DEATH PENALTY CASE –
)	ORAL ARGUMENT REQUESTED
Respondent.)	

**PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE
MEMORANDUM IN SUPPORT OF HABEAS PETITION**

Now comes, Petitioner, by and through counsel and requests an extension of time in which to file his Memorandum in Support of his Habeas Petition. Petitioner respectfully requests an extension up to and including April 4, 2005 to file the Memorandum in Support. Petitioner's counsel contacted Mr. Wille, Counsel for Respondent, and he has indicated that he will **not oppose** this request for an extension of time. The reasons in support of this request are more fully explained in the attached memorandum in support.

Respectfully Submitted,

/s/ Laurence E. Komp
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-and-

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COUNSEL FOR PETITIONER

Memorandum in Support

On December 3, 2004, this Court, after a telephone conference, issued a scheduling order that requires Petitioner to file a Memorandum in Support of his Habeas Petition on or before February 1, 2005. Doc. 112. At the telephone conference, Attorney Komp noted that he was not aware of Attorney O'Hara's schedule. Petitioner's counsel have been diligently working towards that deadline, however, other case matters that could not be put over or extended will prevent counsel from meeting that due date.

Attorney O'Hara currently has an argument in the Ohio Court of Appeals (Franklin County) scheduled for January 26, 2005. He has a brief due on February 8, 2005, in the Sixth Circuit in a Title VII/Age Discrimination case. He has a medical malpractice jury trial scheduled to begin February 22, 2005, in Hamilton County Common Pleas, which will run approximately two to three trial weeks. He also has a jury trial scheduled to begin in a §1983 case in the United States District Court for the Eastern District of Kentucky on March 21, 2005, which will run approximately three or four trial days. Thus, his current briefing and trial schedule make it extremely difficult to assist in any substantive way with the merits briefing in this case prior to the final week in March, 2005.

Subsequent to the telephone conference, Attorney Komp received notice of the setting by the Ohio Supreme Court of an execution date of March 8, 2005 for William Henry Smith. Mr. Smith has completed one round of federal review thus this execution

date is "real." Attorney Komp had objected to the setting of the execution date because state court proceedings continue. As a result of the execution date, Attorney Komp must participate in clemency matters currently scheduled by Ohio Adult Parole Authority on dates immediately before (January 27, 2005) and after (February 8, 2005), the current due date. Further, due to the pending state court proceedings, federal proceedings must be initiated prior to the execution date.

Petitioner's counsel have contacted Mr. Wille, Counsel for Respondent, and he has indicated that he will not oppose this request for an extension of time.

Petitioner's request is not for purposes of delay, but a result of conflicts with other case matters that will prevent his counsel from meeting the current case scheduling order. Counsel do not anticipate requesting any additional time to complete the memorandum.

WHEREFORE, Petitioner respectfully requests an extension up to and including April 4, 2005 to file the Memorandum in Support.

Respectfully Submitted,

/s/ Laurence E. Komp
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed with and will be made available to Respondent via this Court's electronic filing system and pursuant to Loc. R. 5.2 this constitutes service.

/s/ Laurence E. Komp
LAURENCE E. KOMP - 0060142